by a collision on the high seas between two vessels owned by citizens of the same state, recovery may be had in an admiralty court under the state statute. *The Hamilton*, 207 U. S. 398. This case is also important as it recognizes that the controlling law is the law of the vessel and not a general maritime law — a basic idea of certain much criticized cases in the lower courts.[15]

THE UNITY OF ESTATES NECESSARY TO EXTINGUISH AN EASEMENT. — The notion, found in the civil law, that one piece of land could have rights as against another piece of land,[1] was easily assimilated by the medieval legal mind.[2] That conception, unreasoning as it seems, cannot be wholly ignored today. It is fundamental that easements are an incident of land, even to the extent that a disseisor is entitled to the enjoyment.[3]

Property may be said to give the entitled party the power of applying it to all purposes; an easement to give the entitled party the power of applying the subject — that is, the servient tenement — to exactly determined purposes.[4] Two estates are thus presupposed, the dominant and the servient. Then, as an easement is a definite subtraction, accruing to the owner of the one, from the indefinite right of user or exclusion residing in the owner of the other, it follows that no one has an easement over his own land, for otherwise he would have a right in a thing against himself. Thus results the doctrine that if the two estates become united in ownership the easement is extinguished. The particular right is merged in the more extensive right, and the user becomes an act of property. The reason of the rule gains strength, in reality, from the so-called exception of the easement of watercourses, for there the user is not adverse.[5] And so in the case of a warren.[6] But the doctrine stands on a more technical ground than that of mere unity of ownership, as it is commonly stated. There must be unity of seisin.[7] Even then, if the estates are of different duration, the easement is merely suspended.[8] The user is then just as clearly an act of property, but the distinction is perhaps to be attributed to a medieval conception that in such cases the two pieces of land were not completely welded. In short, the principle seems to be that, in order to work extinction of the easement by merger, the owner of the two tenements must have an estate in fee simple in both of an equally durable, indeterminable nature.[9]

The further question arises, whether unity of possession or enjoyment must be added to the unity of seisin. A recent decision of the English Court of Appeal that, where the owner of the dominant tenement, who had a tenant, conveyed to the owner of the servient, an easement of light was

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[15] See 21 HARV. L. REV. 1, 75.

[1] See D. 8, 4, 12, . . . "that land is bound to land."

[2] See Bracton, fol. 220 b, § 1. "One estate is free, the other subjected to slavery."

[3] See Holmes, Common Law, 381.

[4] See Austin, Jurisp., 4 ed., 823.

[5] Sury *v.* Pigot, Poph. 166. "The thing hath its being *ex jure naturae*."

[6] Y. B., 35 Hen. VI, f. 55, 56, since, they say, "a man may have a warren in his own land."

[7] Thomas *v.* Thomas, 2 C. M. & R. 34; Dority *v.* Dunning, 78 Me. 381 (unity of an estate in fee and an estate for years).

[8] Rex *v.* Inhabitants of Hermitage, Carth. 239 (unity of a fee simple indeterminable with a fee simple determinable); James *v.* Plant, 4 A. & E. 749 (unity as coparcener in fee simple and tenant in common in tail general).

[9] See Gale, Easements, 7 ed., 486.

not extinguished as against the tenant, appears, at first sight, an authority for such a broad doctrine. *Richardson* v. *Graham*, [1908] 1 K. B. 39. But this case stands on its own ground and is but a logical conclusion from a recent decision of the House of Lords,[10] following two earlier cases,[11] to the effect that, in order to acquire an easement of light under the Prescription Act,[12] the user need not be of right, but need only be actual for the prescriptive period, and that hence one termor can prescribe for such an easement as against another under a common landlord. Then, if the common ownership does not prevent the acquisition of the easement of light, a merger of the two estates should not operate against the tenant to extinguish the easement already acquired, unless the conveyance gives also the right to possession. This brings out admirably the intrinsic nature of the general principle. If, in order to acquire the easement, the user must be adverse to the land, as in the ordinary easement, one termor cannot prescribe as against another under a common landlord,[13] or as against his landlord.[14] Therefore it results, conversely to the anomalous easement of light, that as unity of seisin will prevent the acquisition of the ordinary easement, so a merger of the two estates in fee simple, though without unity of possession, will work an extinction — a conclusion not without support.[15]

WHETHER A TESTAMENTARY GIFT TO A CLASS INCLUDES A CHILD EN VENTRE SA MÈRE. — In many cases of bequest or devise, where the person or persons entitled to the benefit are to be determined on some particular event, the courts have included a child *en ventre sa mère* when the event actually occurred. In both England and the United States this result seems now to be uniformly reached when the devise or bequest runs to "children" or "grandchildren" as a class,[1] to a "son,"[2] or to one "living" at the particular time.[3] In other cases such children have been included when the words were "issue then living,"[4] one "born,"[5] to J., if B. "hath no son,"[6] or "sons born and begotten."[7] In all these cases nothing is made to turn on whether the particular event is the death of the testator, or that of some other person, or the termination of a period of years.[8] Further, when neither a benefit nor a detriment, a child *en ventre sa mère* has been included when the will ran, to "children,"[9] "issue living,"[10] or "leaving issue."[11] When, however, it is detrimental to the

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10 Morgan *v.* Fear, [1907] A. C. 425.
11 Frewen *v.* Philipps, 11 C. B. (N. S.) 449; Mitchell *v.* Cantrill, 37 Ch. D. 56.
12 2 & 3 Wm. IV, c. 71, § 3.
13 Kilgour *v.* Gaddes, [1904] 1 K. B. 457.
14 Gayford *v.* Moffatt, L. R. 4 Ch. 133.
15 See Buckby *v.* Coles, 5 Taunt. 311, 315; Clayton *v.* Corby, 2 Q. B. 813, 826.

1 Crook *v.* Hill, 3 Ch. D. 773; Swift *v.* Duffield, 5 Serg. & R. (Pa.) 38.
2 Reeve *v.* Long, 1 Salk. 227; Stedfast *v.* Nicoll, 3 Johns. Cas. (N. Y.) 18.
3 Doe *v.* Clarke, 2 H. Bl. 399; Randolph *v.* Randolph, 40 N. J. Eq. 73.
4 Laird's Appeal, 85 Pa. St. 339.
5 Trower *v.* Butts, 1 Sim. & St. 181; Baker *v.* Pearce, 30 Pa. St. 173.
6 Blackburn *v.* Stables, 2 Ves. & B. 367.
7 Whitelock *v.* Heddon, 1 B. & P. 243.
8 See Pearce *v.* Carrington, L. R. 8 Ch. 969.
9 Groce *v.* Rittenberry, 14 Ga. 232.
10 *In re* Burrows, [1895] 2 Ch. 497. *Contra*, Blasson *v.* Blasson, 2 De G. J. & S. 665. See 9 HARV. L. REV. 349.
11 Bedon *v.* Bedon, 2 Bailey (S. C.) 231.